THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.7241 of 2007

10.4.2007

Between:

J.M.Chandrasekhar @ Chinni, S/o.J.Munirathnam

… Petitioner

AND

A.S.Elumalaih, S/o.A.M.Shanmuga Mudali

And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

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ORDER:

The petitioner was elected as member of Gram Panchayat for 9th ward of Murukambattu Gram Panchayat in the elections held on 04.12.2001. The first respondent, namely, A.S.Elumalai and one T.Seshadri Naidu also contested for the election. Challenging the election of the petitioner, Elumalai filed election petition being E.O.P. No.4 of 2002 under Section 233 of the Andhra Pradesh Panchayat Raj, 1994 (the Act, for brevity) read with Rule 12 of A.P. Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995 (the Rules for brevity). It was alleged that by Elumalai that the petitioner herein incurred disqualification under Section 19(3) of the Act for having three children. Petitioner opposed the same by filing counter. In the election petition, first respondent herein was examined as P.W.1 and marked Exs.A.1 to A.4. He also examined P.W.2 a clerk of Gram Panchayat, who made entries in the Births and Deaths Register of the Gram Panchayat. Petitioner herein examined four witnesses and marked Ex.B.1. Exs.X.1 to X.5 were also marked. On considering the evidence, the Election Tribunal held that the petitioner incurred disqualification under Section 19(3) of the Act and accordingly declared him as disqualified to contest the election and set aside the election. Against the said order dated 26.3.2007, the present writ petition is filed.

Learned Counsel for the petitioner contends that the mandatory requirement under Rule 5 of the Rules was followed more in breach by the first respondent, and therefore, the Election Tribunal ought not to have entertained the election petition. He placed reliance on the decision of Division Bench of this Court in **Anjamma v Pushpamma**[1]. He also submits that the learned Tribunal failed to appreciate the evidence in proper perspective and that the findings are

vitiated by perversity.

This Court, with the assistance of the learned Counsel for the petitioner, has perused the counter filed by the petitioner herein before the Election Tribunal-cum-Principal Junior Civil Judge, Chittoor. The petitioner did not contend that the election petition is not maintainable under Rule 5 of the Rules. The said Rule is to the effect that, at the time of presentation of the petition, election petitioner shall deposit with it an amount of Rs.100/- as security for the costs of the same. In this case, as seen from the decretal order, Elumalai filed election petition on 26.12.2001 along with a court fee of Rs.25/- and also paid a sum of Rs.100/- on 04.3.2002. This was presumably because he did not file the lodgment schedule in proof of the payment and, therefore, the Election Tribunal in all probability had returned the election petition pointing out the same. When the election petition is rejected only on the ground of non-payment of requisite amount, Rule 5 of the Rules is not attracted. Subsequently as pointed out above nowhere in the counter, the petitioner raised regarding non-payment of the amount nor there was a point for consideration before the Election Tribunal. The term of the petitioner was over and at the stage of writ petition such a ground is not allowed. Insofar as the second submission is concerned, it is well settled that Tribunal's decision can be invalidated only when there is grave error apparent on the face of record. It is also well settled that when two views are possible from the same evidence, the Court of Judicial Review should not set aside the finding of fact merely because another view is possible (see **R.Jagadeeshwar v P.Goutham Goud**[2]).

In this case, Elumalai deposed that the petitioner's third child was born on 17.7.1998. In support of this, he examined N.Sampoornamma as P.W.2, Multi-purpose Health Assistant (Female) working at Sub-center of Primary Health Center, N.R.Pet. She admitted that she made entries Exs.X.1 to X.5, which clinchingly show that petitioner's third child born on 17.7.1998. It is needless to mention that Section 19(3) of the Act incurs disqualification of a person having three children as on 30.5.1995, the date on which the Act came into force, from contesting the election. However if the third child born within one year from the date of coming into force of the Act, such a person would not incur any disqualification. In this case, third child of the petitioner born on 17.7.1998 and, therefore, *ex facie* petitioner incurred disqualification and the impugned order passed by the Election Tribunal does not suffer from any infirmity.

The writ petition, with the above observations, is accordingly dismissed.

(**V.V.S.RAO, J**)

April 10, 2007.
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[1] 2001(1) ALT 535 (DB)
[2] 2003(6) ALT 226